IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

WRIT PETITION NO.280 OF 2002(M/S)

Doon Co.operative Store Ltd. Astley Hall,
Dehradun through its Secretary.

... Petitioner.

Versus

1. Presiding Officer, Labour Court, Dehradun.
2. Jagdish Singh Bhati S/o Sri Nepal Singh Bhati,
   R/o Village Nakla Kanchan, Post Karauli Sagar,
   District Bulandshahar (U.P.)

... Respondents.

Sri Rajendra Dobhal, Ld.counsel for petitioner.
Sri Gopal Narain, Ld. Counsel for the respondents.

25.08.2005.

HON'BLE P.C. VERMA, J.

This writ petition has been filed by the petitioner challenging the Award dated 27.02.2002 passed in Reference Case No. 219 of 1998 by which the respondent No.2 has been reinstated with a stoppage of one increment. Tribunal has further awarded 50% back wages and Rs 2000/- expenses towards litigation.

Brief facts of the case are that the respondent no.2 workman was appointed on 21.04.1987 on the post of Salesman in the Society and he was posted in the Store of the society. Subsequently the respondent no.2 was transferred to Gas Godown running under the Society and posted as Incharge of the said godown. It is alleged that during his service respondent no.2 committed serious irregularities and misappropriated the money of Gas store of society.

A departmental enquiry was conducted against the respondent and after enquiry it was found that the respondent no.2 was guilty of the charges leveled against him and accordingly his services were terminated on 09.08.1997.

The Labour Court, Dehradun issued notices to both the parties for filing the written Statements. The petitioner as well as the respondent no.2 appeared before the Labour Court and filed their written statements and objection. After considering the material on record, the Labour Court passed the Award ordering reinstatement of respondent no.2 with stoppage of one increment. Feeling aggrieved, the petitioner has filed the present writ petition.

I have heard learned counsel for both the parties and perused the material available on record.

It was contended by the learned counsel for the petitioner that the Arbitrator found respondent no.2 guilty of misappropriation of money to the tune of Rs. 4,55,764.88p. of store of the society and ordered recovery of the said amount from respondent no.2 On the other hand the learned counsel for respondent no.2 contended that the Arbitrator, under section 70 of U.P. Cooperative Societies Act, cannot decide the dispute regarding termination of services of the employee of Cooperative Society . It has also been contended that the respondent no.2 was transferred to Gas Godown as Incharge without giving him any training for the said job, as was done in the case of others.

In Section 6(2-A) of the U.P. Industrial Disputes Act the Labour Court has been given the power to see

the procedure adopted in the enquiry proceeding and fairness and thereafter if the Labour Court came to the conclusion that the enquiry was not fair and proper the employer will be allowed to lead evidence for proving the charge. The Labour Court, after hearing and discussing the evidence on record, recorded a categorical finding and has rightly held that the charges of misappropriation of money of the Society are not proved against the respondent no.2 except negligence and punishment of dismissal from service is excessive. It is also established from the record that the respondent no.2 was not given any training regarding the functioning of the work to be done by the employee posted in Gas Godown as was done in the case of other employees who were posted to work in the Gas Godown. The Labour Court has rightly passed the Award for reinstatement of the respondent No.2 with stoppage of one increment.

In view of the findings recorded above, I do not find any infirmity in the order passed by the Labour Court. The findings recorded by the Labour Court are findings of fact and this court, therefore, in exercise of powers under Article 226 of the Constitution of India, declines to interfere with the findings recorded by the Labour Court.

Accordingly the grounds of challenge fail and writ petition is dismissed. No order as to costs.

(P.C.Verma, J)

Dated: 25.08.2005.
Negi.

WPMS No. 280/02

Hon'ble P.C Verma, J.

(Delay Condn. Appln. No. 5661 of 2006)
(Review Appln. No. 57/06)

Heard learned counsel for the parties on the application supported by affidavits.

The reasons mentioned in the accompanying affidavit for the application for condonation of delay are not satisfactory, as the delay has not satisfactorily been explained. Hence the application for condonation of delay is rejected. Consequently, the review application is also rejected.

Both the applications are rejected accordingly.

(P.C. Verma, J.)

25-5-2006
Rajeev Dang